



Billing Code 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5630-N-07]

Rental Assistance Demonstration: Revised Program Notice

AGENCY: Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On July 26, 2012, HUD announced through notice in the Federal Register the implementation of the statutorily authorized Rental Assistance Demonstration (RAD), which provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based section 8 rental assistance. The July 26, 2012, Federal Register notice also announced the availability of the program notice (PIH 2012-32), providing program instruction on HUD's website. On July 2, 2013, HUD issued a revised program notice (PIH 2012-32, REV-1). This Federal Register notice announces further revisions to RAD and solicits public comment on changed eligibility and selection criteria. It also announces the posting of a further revised program notice (Revised Program Notice, PIH 2012-32, REV-2). As provided by the RAD Statute, this notice addresses the requirement that the demonstration may proceed after publication of notice of its terms in the Federal Register. This notice summarizes the key changes made to PIH 2012-32, REV-1. This notice also meets the RAD statutory requirement to publish at least 10 days before they may take effect, waivers and alternative

requirements authorized by the statute, which does not prevent the demonstration from proceeding immediately.

DATES: Comment Due Date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Interested persons are invited to submit comments electronically to rad@hud.gov no later than the comment due date.

Effective Dates: The Revised Program Notice, PIH 2012-32, REV-2, other than those items listed as subject to notice and comment or new statutory or regulatory waivers or alternative requirements specified in this notice, is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The new statutory and regulatory waivers and alternative requirements are effective **[INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The items listed as subject to notice and comment will be effective upon **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If HUD receives adverse comment that leads to reconsideration, HUD will notify the public in a new notice immediately upon the expiration of the comment period.

FOR FURTHER INFORMATION CONTACT: To assure a timely response, please direct requests for further information electronically to the email address rad@hud.gov. Written requests may also be directed to the following address: Office of Public and Indian Housing—RAD Program; Department of Housing and Urban Development; 451 7th Street SW, Room 2000; Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Background

RAD, authorized by the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 122-55, signed November 18, 2011) (2012 Appropriations Act), allows for the conversion of assistance under the public housing, Rent Supplement (Rent Supp), Rental Assistance (RAP), and Moderate Rehabilitation (Mod Rehab) programs (collectively, “covered programs”) to long-term, renewable assistance under section 8.¹ As provided in the Federal Register notice published on March 8, 2012, at 77 FR 14029, RAD has two separate components:

First Component: Under the RAD Statute, the First Component of RAD allows projects funded under the public housing and Mod Rehab programs² to convert to long-term section 8 rental assistance contracts. Under this component of RAD, which is covered by section I of the Revised Program Notice, Public Housing Authorities (PHAs) and Mod Rehab owners may apply to HUD to convert to one of two forms of section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No additional or incremental funds were authorized for this component of RAD and, therefore, PHAs and Mod Rehab owners will be required to convert assistance for projects at current subsidy levels. The RAD Statute authorizes up to 185,000 units to convert assistance under this component.³ The RAD Statute further specifies that HUD shall provide an opportunity for public comment on draft eligibility and selection criteria and the procedures that will apply to the selection of properties that will participate in this component of the demonstration.

¹ The RAD statutory requirements were amended by the Consolidated Appropriations Act, 2014 (Pub. L. 113-76, signed January 17, 2014) (2014 Appropriations Act) and the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235, signed December 16, 2014) (2015 Appropriations Act). The statutory provisions of the 2012 Appropriations Act pertaining to RAD, as amended, are referred to as the RAD Statute in this notice.

² While the statute authorizes conversions from Mod Rehab assistance under the First Component, the revisions to the program notice are requiring that all conversions from Mod Rehab be conducted under the Second Component.

³ The original 2012 Appropriations Act allowed for a cap of only 60,000 units to convert assistance under the First Component. However, this cap was raised to 185,000 by the 2015 Appropriations Act.

The First Component became effective on July 26, 2012. The initial, competitive application period for the First Component opened on September 24, 2012, and closed on October 24, 2012, at which time the second application period opened.

Second Component: The Second Component of RAD, which is covered under sections II and III of the Revised Program Notice, allows owners of projects funded under the Rent Supp, RAP, and Mod Rehab programs with a contract expiration or termination occurring after October 1, 2006, to convert tenant protection vouchers (TPVs) to PBVs or PBRA.⁴ There is no cap on the number of units that may be converted under this component of RAD. While these conversions are not necessarily subject to the current funding levels for each project or a unit cap similar to public housing conversions, the rents will be subject to rent reasonableness under the PBV program and are subject to the availability of overall appropriated amounts for TPVs.

The Second Component was effective on March 8, 2012, in Notice PIH 2012-18, and has been amended in subsequent program notice revisions, including the Revised Program Notice. Applications for conversion of assistance under this component may be submitted immediately.

Waivers and Alternative Requirements. The RAD Statute provides that waivers and alternative requirements authorized under the First Component must be published by notice in the Federal Register no later than 10 days before the effective date of such notice. Under the Second Component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the 1937 Act).

⁴ Authority to convert assistance to PBRA under the Second Component was granted by the 2015 Appropriations Act. In addition, the 2015 Appropriations Act expanded the authority to convert Mod Rehab contracts under both the First and Second Components to include Mod Rehab Single Room Occupancy contracts, which were explicitly excluded under the 2012 Appropriations Act.

HUD has previously published its waivers and alternative requirements for RAD, on July 26, 2013 (77 FR 43850) and July 2, 2013 (78 FR 39759). This notice only includes waivers and alternative requirements not previously published. Although waivers or alternative requirements under the Second Component are not subject to a Federal Register publication requirement, the new Second Component waivers and alternative requirements are included in this notice as a matter of convenience.

II. Key Changes made to RAD

The following highlights key changes to the RAD program that are included in the Revised Program Notice:

First Component

1. Reflecting the increase to the unit cap from 60,000 to 185,000 units
2. Modifying the first-come, first-serve approach for selecting projects for participation in RAD in order to prioritize properties that are part of broader neighborhood revitalization and that have higher investment needs (see section 1.11). [Subject to 30-day notice and comment]
3. Limiting conversions under the First Component to public housing projects. Mod Rehab projects will now be converted only under the Second Component (see section 2.1). [Subject to 30-day notice and comment]
4. Extending the time period for submission of the application of the final phase of multi-phase projects to July 1, 2018 (see section 1.9.C).
5. Providing contract rents at fiscal year (FY) 2014 rent levels for all awards made subsequent to the increase in the unit cap (see sections 1.6.B.5 and 1.7.A.5).
6. Ensuring residents retain rights and protections when their total tenant payment (TTP) exceeds the gross rent on the HAP contract (see sections 1.6.C.10 and 1.7.B.9).

7. Eliminating interim program milestones to streamline processing and providing additional time to submit Financing Plans for tax credit transactions, to better align those deadlines with those of tax credit providers (see section 1.12).

8. Identifying the specific HUD nondiscrimination and equal opportunity requirements that are applicable under different conversion plans and establishing an up-front HUD review of these requirements for certain transactions (see section 1.2.E).

9. Clarifying when nondwelling property and land can be removed or released from the public housing program in conjunction with the conversion of assistance (Attachment 1A.M).

10. Permitting RAD contract rents to increase by a portion of the estimated savings in resident utility allowances (see sections 1.6.B.5 and 1.7.A.5 and Attachment 1C).

11. Permitting section 8 assistance to “float” within certain mixed-income properties, so that assistance is not permanently tied to specific units in a project (see sections 1.6.B.10 and 1.7.A.11).

12. Providing additional flexibility for voucher agencies to implement Choice-Mobility provisions in PBV conversions (see section 1.6.D.9).

13. Clarifying the applicability of site and neighborhood standards to new construction on the site of the existing public housing (see section 1.4.A.7).

14. Clarifying that a PHA may operate a PBV program-wide or HCV program-wide waiting list and that a project owner may operate a community-wide waiting list for its PBRA projects (see sections 1.6.D.4 and 1.7.C.3).

15. Providing greater detail around conversions that would transfer the assistance to a new site, including criteria HUD will use to assess the new site and options for the use or disposition of the original public housing site (see section 1.4.A.12).

Second Component

1. Providing an option for owners of Mod Rehab, Rent Supp, and RAP projects to convert to 20-year PBRA (see sections 2 and 3).
2. Allowing Mod Rehab SROs that were funded under the McKinney-Vento Homeless Assistance Act (SROs) to convert to long-term PBV or PBRA contracts (see section 2).
3. Formalizing applicability of Davis-Bacon wages for conversions of assistance (see sections 2.5.J, 2.6.G, 3.5.J, and 3.6.I).
4. Clarifying PBV rent setting in section 236 decoupled projects (see section 3.5.H).

III. New Waivers and Alternative Requirements

The RAD Statute provides that waivers and alternative requirements authorized under the First Component must be published by notice in the Federal Register no later than 10 days before the effective date of such notice. Under the Second Component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the 1937 Act. Although waivers under the Second Component are not subject to a Federal Register publication requirement, the second component waivers are included as a matter of convenience.

On July 26, 2012, and July 2, 2013, HUD published by notice lists of RAD waivers and alternative requirements. Those lists, which became effective August 6, 2012, and July 12, 2013, respectively, are still in effect and are not reproduced here. Provided below is a list of new waivers and alternative requirements that will become effective [**INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

1. Under-Occupied Units at Time of Conversion. Provisions affected: 24 CFR 983.259 and 24 CFR 880.605. Alternative requirements: Families occupying, at the time of conversion of assistance, a unit that is larger than is appropriate, may remain in the unit until an appropriate-

sized unit becomes available in the covered project. For conversions of assistance under the Second Component, this alternative requirement will only apply to families who are elderly or disabled.

2. Assistance for Families when Total Tenant Payment (TTP) Exceeds Gross Rent.

Provisions affected: Section 8(o)(13)(H) of the 1937 Act and 24 CFR 983.301 and 983.53(d); sections 8-5 C and 8-6 A.1 of Housing Handbook 4350.3, REV-1. Alternative requirements: PHAs and owners must continue to treat certain families in public housing that has converted assistance as assisted and charge 30 percent of adjusted gross income in rent. The families covered by this alternative requirement must have incomes high enough for their TTP to exceed the contract rent yet still remain eligible for assistance or otherwise be unable to afford market rate housing in their community.

3. Choice-Mobility Cap for Public Housing Conversions to PBV. Provisions affected:

Section 8(o)(13)(E) of the 1937 Act and 24 CFR 983.261(c). Alternative requirements: PHAs may, for projects that have converted assistance from public housing to PBV, provide one of every four turnover vouchers to households on their regular HCV waiting list instead of for Choice-Mobility vouchers.

4. Rent Supp/RAP Contracts After Section 236 Prepayment. Provision affected: 24 CFR 236.725. Alternative requirement: The original RAP or Rent Supp contract may remain in place for 60 days after repayment of a section 236 mortgage until the PBV HAP contract is executed.

5 Uniform Physical Condition Standards (UPCS) Inspections. Provision affected: 24 CFR part 5, subpart G. Alternative requirement: All units converting assistance to PBRA must meet the Uniform Physical Condition Standards no later than the date of completion of initial repairs as indicated in the RAD conversion commitment.

6. Floating Units. Provision affected: 24 CFR 983.203(c). Alternative requirement: For certain projects (Choice, Mixed Finance, and HOPE VI), HUD is allowing PBV assistance to float among unassisted units.

IV. Other New Provisions

In addition to the waivers above, the following change to the RAD program has been implemented:

Initial Contract Rent Setting for Conversions of Assistance from Rent Supp/RAP. The 2015 Appropriations Act permitted HUD to convert Rent Supp and RAP properties to PBRA. To implement this authority, HUD must establish how to set the contract rents for these conversions. Rents will be set on the post-rehabilitation market rents, as determined by a rent comparability study, not to exceed 110 percent of the fair market rent.

V. Revised Program Notice Availability

The Revised Program Notice (PIH 2012-32, REV-2) can be found on RAD's website, www.hud.gov/RAD.

VI. Environmental Review

A Finding of No Significant Impact with respect to the environment was made in connection with HUD notice PIH 2012-32 issued on March 8, 2012, and in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding remains applicable to the Revised Program Notice and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel; Department of Housing and Urban Development; 451 7th Street SW, Room 10276; Washington, DC 20410– 0500. Due to security

measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

Dated: June 19, 2015.

Lourdes Castro Ramírez,
Principal Deputy Assistant
Secretary for Public and Indian Housing.

Edward L. Golding,
Principal Deputy Assistant
Secretary for Housing.

Nani A. Coloretti,
Deputy Secretary.

Approved on June 3, 2015.

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